IN THE IOWA DISTRICT COURT FOR POLK COUNTY

JOHN N. TAYLOR, Petitioner, vs. IOWA PUBLIC EMPLOYMENT RELATIONS BOARD, Respondent, and IOWA DEPARTMENT OF PERSONNEL, Intervenor.	AA NO. 2525 RULING ON PETITION FOR JUDICIAL REVIEW

Petitioner's Petition for Judicial Review came before this Court. Neither party requested oral argument. After reviewing the agency record and briefs submitted by counsel, the Court finds as follows:

FINDINGS OF FACT

1. The Petitioner, John N. Taylor, Sr., is an African-American male. In January of 1986, he was hired by the Iowa Department of Employment Services ("DES") as a Job Service Interviewer I, and was subsequently promoted to the classification of Job Service Interviewer II. In May of 1989, he was promoted to the position of Job Service Manager.

2. Each of Taylor's positions were part of the Field Operations Bureau ("FOB") of DES. A primary function of the FOB is the statewide operation of various federally-funded employment programs. FOB personnel are paid almost entirely with funds contributed by the federal government. While federal funds may only be expended in furtherance of the federal program for which the funds

are allocated, the federal funds can and are used to pay both contract-covered and non-contract employees involved in the operation of the designated program.

3. In June of 1991, the Iowa Department of Management ("DOM") was instructed by the Governor of Iowa to reduce the number of supervisors in state government to finance salary increases that contract-covered employees had obtained through arbitration and litigation. DOM subsequently ordered all state agencies to reduce their budgets by 3.25 percent, and to prepare reduction in force plans that would reduce salary and benefits by $1.2 million, over $300,000 of which was to come from the elimination of non-contract positions.

4. DES subsequently devised a reduction in force plan to eliminate four positions in the Public Service Executive III job class. The FOB consisted of four regions, and this plan provided that Public Service Executive IIIs would be eliminated in three of the four regions, so that all four regions would have only one individual in the Public Service Executive III class. DES calculated retention points to determine which Public Service IIIs would be laid-off pursuant to the plan. The Public Service IIIs with the fewest total retention points were given bumping rights. In other words, they were given the ability to assume the position of a lower level employee in lieu of layoff. Pursuant to Iowa Department of Personnel ("IDOP") rules, the movement in lieu of layoff could be to a lower class in the same series (i.e., Job Service Interviewer II to Job Service Interviewer I), or to a class formerly held by the bumping employee in which he or she had permanent status. The bumping employee could only displace individuals in the lower class who possessed fewer total retention points than those possessed by the bumping employee, and who possessed the fewest total retention points of all employees in that lower class. In August of 1991, IDOP and the Governor's Office approved the DES reduction in force plan.

5. The approved plan, including a retention point listing, was subsequently posted and written notices of layoff were forwarded to the affected Public Service Executive IIIs. At that time, Taylor possessed the fewest total retention points of all Job Service Managers within his region. One of the displaced Public Service Executive IIIs who had previously held the classification of Job Service Manager bumped into Taylor's position, making Taylor subject to layoff. Taylor received written notice of his layoff and was advised of his right to bump into the classification of Job Service Interviewer I or II. Taylor exercised his right and bumped into a Job Service Interviewer II position, displacing another employee.

6. Taylor filed a grievance challenging the reduction in force plan, and on September 26, 1991, the grievance was denied. On October 7, 1991, Taylor appealed the decision to the Iowa Public Employment Relations Board ("PERB") alleging that the state reduction in force plan violated Iowa Code sections 19A.9(14), 19A.18, 19B.2, and 19B.6. The State of Iowa filed a motion to dismiss, and on April 27, 1992, the administrative law judge dismissed the section 19A.18, 19B.2, and 19B.6 claims ruling that PERB was without jurisdiction to decide those claims. The administrative law judge left intact the section 19A.19(14) claim. On December 14, 1992, Taylor amended his appeal alleging that the reduction in force plan violated Iowa Code sections 19A.9(1), (13), (14), (20), as well as certain constitutional rights. On April 7, 1994, the administrative law judge dismissed Taylor's grievance appeal ruling that he failed to establish the state's lack of substantial compliance with chapter 19A and IDOP's rules. The administrative law judge declined to rule on the constitutional questions raised by Taylor finding that PERB did not have the authority to decide such issues. Taylor appealed the decision to the full PERB, and on January 6, 1995, the Board adopted the administrative law judge's findings of fact and conclusions of law and dismissed

Taylor's grievance appeal. On January 25, 1995, Taylor filed a motion for rehearing which the Board denied. Taylor subsequently filed a Petition for Judicial Review in this Court alleging that the reduction in force plan violated his due process and equal protection rights under the United States Constitution, and that PERB erred as a matter of law by holding that the reduction in force plan did not deprive the state of federal funds.

CONCLUSIONS OF LAW

On judicial review of an agency action, the district court functions in an appellate capacity to apply the standards of Iowa Code section 17A.19(8) (1995). Iowa Planners Network v. Iowa State Commerce Comm'n, 373 N.W.2d 106, 108 (Iowa 1985). The Court has no original authority to declare the rights of the parties. Office of Consumer Advocate v. Iowa State Commerce Comm'n, 432 N.W.2d 148, 156 (Iowa 1988). Nearly all disputes in the field of administrative law are won or lost at the agency level. Iowa-Illinois Gas & Electric Co. v. Iowa State Commerce Comm'n, 412 N.W.2d 600, 604 (Iowa 1987). Judicial review of agency action is confined to corrections of errors of law. Farmers Coop Oil Ass'n v. Den Hartog, 475 N.W.2d 7, 9 (Iowa Ct. App. 1991).

An agency's final decision must be affirmed if it is supported by substantial evidence and is correct in its conclusions of law. Glowacki v. Iowa Bd. of Medical Examiners, 516 N.W.2d 881, 884 (Iowa 1994); Iowa Code § 17A.19(8)(e). Evidence is substantial to support an agency's decision when a reasonable person would find it adequate to reach the same conclusion. Pointer v. Iowa Dep't of Transp., Motor Vehicle Div., 546 N.W.2d 623, 625 (Iowa 1996). In deciding whether an agency made errors of law, the Court gives weight to the agency's construction of a statute but is not bound by this construction. Super Valu Stores, Inc. v. Iowa Dep't of Revenue, 479 N.W.2d 255, 258 (Iowa 1991). It is ultimately the duty of the Court to determine matters of law including the

interpretation of a statute. Hollinrake v. Iowa Law Enforcement Academy, 452 N.W.2d 598, 601 (Iowa 1990).

However, when constitutional issues are raised, the Court's review is de novo. Freeland v. Employment Appeal Bd., 492 N.W.2d 193, 195 (Iowa 1992). The Court must take an independent view of the record and the circumstances surrounding the case. Rosen v. Board of Medical Examiners, 539 N.W.2d 345, 348 (Iowa 1995). Review is limited to those questions considered by the administrative agency. Soo Line Railroad Co. v. Iowa Dep't of Transp., 521 N.W.2d 685, 688 (Iowa 1994). The constitutional issues must be raised at the agency level to be preserved for judicial review. Id.

I. The Due Process Claim

In order to establish a due process violation, a plaintiff must first show that his asserted interest is protected by the due process clause. Bliek v. Palmer, 916 F.Supp. 1475, 1485 (N.D. Iowa 1996). Interests protected by the Fourteenth Amendment's Due Process Clause include a plaintiff's liberty and property interests. Id. at 1486. A public employee must have an expectation in continued employment to establish a property interest in it. Winegar v. Des Moines Indep. Community Sch. Dist., 20 F.3d 895, 899 (8th Cir. 1994). The existence of an expectation in continued employment is determined with reference to state law. Id. An expectation of continued employment typically arises from contractual or statutory limitations on the employer's ability to terminate the employee. Id. In Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532 (1985), for example, the United States Supreme Court held that an expectation in continued employment exists where a state statute provides that public employees could be discharged only for cause. Id. at 538-39.

In the present case, Taylor argues that he has a property interest in his employment under

Iowa Code chapter 19A (1995). This Court believes that a review of that chapter indicates to the contrary. The personnel commission is directed in Iowa Code section 19A.9(14) (1995) to establish rules for "layoffs by reason of lack of funds or work, or organization, and for re-employment of employees so laid off . . .." Id. Iowa Code section 19A.9(16) (1995) additionally provides that a merit status employee, like Taylor, may be discharged only for cause. Id. There is a clear distinction between a discharge and a layoff. See Riggs v. Commonwealth of Kentucky, 734 F.2d 262, 265 (6th Cir. 1995). Iowa's statute provides that a discharge cannot take place absent cause. The Iowa statute governing layoffs, however, contains no requirement to show cause. It permits layoffs due to reorganization, lack of funds, or work, or for re-employment of employees so laid off. "It is the cause element which confers upon the property [interest] the imprimatur of constitutionality." Id. Because the Iowa statute governing layoffs provides that a layoff can take place without a show of cause, any expectation in continued employment that Taylor had in this case did not rise to the level of a constitutionally protected interest. It follows, therefore, that Taylor has failed to establish his due process claim.

II. The Equal Protection Claim

This Court finds that Taylor did not raise his equal protection claim at the agency level and thereby preserve the issue for judicial review. Nevertheless, this Court will address the merits of Taylor's claim. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution commands that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV. This is essentially an order that all persons similarly situated be treated alike. Mummelthie v. City of Mason City, 873 F.Supp. 1293, 1332 (N.D. Iowa 1995). Thus, in order to establish an equal protection violation, a plaintiff must first

demonstrate that he or she was treated differently than others who were similarly situated to him or her in all important respects except the classification upon which the unequal treatment is based (i.e., race). Id. at 1333. Absent a showing that he or she is similarly situated to those who allegedly received favorable treatment, the plaintiff does not have a viable equal protection claim. Id.

Here, Taylor argues that the DES reduction in force plan violated his constitutional right to equal protection of the laws. This Court finds that a thorough examination of the record indicates otherwise. Indeed, no evidence whatsoever has been presented showing that Taylor was treated differently than others who were similarly situated to him in all important respects except his race. Taylor merely asserts that after he and another African-American employee were bumped, two similarly situated white females were hired to positions comparable to his and the other employee's former positions. However, there is simply no evidence in the record to support this assertion.

The central purpose of the Equal Protection Clause of the Fourteenth Amendment is the prevention of official state action that discriminates on the basis of race. Giles v. Henry, 841 F.Supp. 270, 274 (S.D. Iowa 1993). Thus, in order to establish an equal protection claim, the plaintiff must also prove purposeful, invidious, intentional discrimination on the basis of plaintiff's race. DePugh v. Smith, 880 F.Supp. 651, 664 (N.D. Iowa 1995). A finding of intentional discrimination must be based on the totality of the circumstances. Giles v. Henry, 841 F.Supp. at 274. The mere showing that there is a discriminatory effect to a particular state action is not sufficient to establish an equal protection claim. Id. Conclusory allegations of racial bias are also not sufficient to establish the existence of discriminatory intent. Id. Therefore, even if Taylor can demonstrate that he was treated differently than others who were similarly situated to him, he must also prove that the DES reduction in force plan was adopted for a discriminatory purpose.

In the present case, no evidence whatsoever has been presented showing that the reduction in force plan was adopted for a discriminatory purpose. The record clearly shows that the reduction in force plan was adopted to finance salary increases that contract-covered employees had obtained through arbitration and litigation. Public Executive IIIs were selected for reduction in order to minimize the number of laid off employees. DES calculated retention points to determine which Public Service IIIs would be laid off pursuant to the plan. The laid off individuals were given bumping rights. When one of laid off individuals exercised his bumping rights, Taylor was bumped because he possessed the fewest total retention points of all Job Service Managers within his region. There is no evidence showing that Taylor was bumped because he is an African-American, or that the plan was designed to bump individuals based on their race. The fact that two African-American employees were bumped as a result of the reduction in force plan, standing alone, is not sufficient to establish the existence of discriminatory intent. It follows, therefore, that Taylor has also failed to establish his equal protection claim.

III. The Deprivation of Federal Funds Claim

The Wagner-Peyser Act addresses the allotment of federal funds to the states, the uses to which the states can place those funds, and requires the states to establish fiscal controls and accounting procedures for those funds. 29 U.S.C. §§ 49-49l. After a thorough examination of the Act, this Court finds nothing that prohibits the states from using federal funds to finance pay increases for contract-covered employees involved in the operation of a federally-funded program. While federal funds may be expended only in furtherance of the program for which the funds are allocated, both contract-covered and non-contract employees may be involved in the operation of the designated program. Here, all FOB personnel are paid with federal funds, and there is nothing

in the Wagner-Peyser Act that prohibits the state of Iowa from using the federal funds to pay both non-contract and contract-covered employees of the FOB. Moreover, there is no evidence whatsoever showing that the federal funds were used to pay contract-covered employees involved in the operation of a state funded program. Thus, IDOP did not violate the Act by using federal funds to finance pay increases for contract-covered employees involved in the operation of the FOB.

In addition, there is no evidence whatsoever to support a violation of Iowa Code section 19A.9(20) (1995) which prohibits the department of personnel from adopting rules or regulations that would "deprive the state of Iowa, or any of its agencies or institutions of federal grants or other forms of financial assistance." Id. Indeed, there is nothing in the record showing that the state of Iowa was deprived of federal funds as a result of the reduction of force plan. It follows, therefore, that the administrative law judge's decision is supported by substantial evidence, and thus was not affected by errors of law.

RULING

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the decision of the Iowa Public Employment Relations Board is AFFIRMED. Costs of appeal are assessed to Petitioner.

Dated this 16th day of January, 1997.

LINDA R. READE, JUDGE
FIFTH JUDICIAL DISTRICT OF IOWA

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